



Ottawa

June 26, 2013

Senate Appeals Committee
c/o Erika Hansen-Reeder
University of Ottawa

RE: Nicholas Ali's appeal

Dear Senate Appeals Committee members:

I am writing to provide you with a summary of what I consider to be the strongest arguments in Nicholas' Ali's case. Having worked on graduate student's cases for the past six years, I have no doubt that Mr. Ali's appeal deserves to be granted. My rationalization is based on the evidence that supports Mr. Ali's appeal. In light of the extensive appeal documentation submitted, I thought it best to provide you with a succinct summary of key arguments. This summary in no way exposes all of the facts in Mr. Ali's case nor is it to say that the other arguments brought forward by Mr. Ali are without merit.

1. Bias of Examiner Edward Lemaire

Thesis examiner Edward Lemaire admits, in writing, to not being able to "keeping [his] mind neutral in [Nicholas Ali's] case" because of his "unsuccessful interactions" with the student. See Appendix A. Dr. Lemaire requested for another professor to replace him as Mr. Ali's thesis examiner. However, Dr. Lemaire was not removed from the thesis committee and even went on to evaluate both versions of the thesis. The evidence submitted establishes a reasonable apprehension of bias. In the Centre's view, this reasonable apprehension of bias must be remedied by minimally nullifying Dr. Lemaire's evaluation.

2. Conflict of Interest between Supervisor and External examiner

In the Fall of 2011 Nicholas Ali's supervisor, Gordon Robertson, proposed two names to the Faculty of Health Sciences with regard to potential external examiners for Mr. Ali's thesis evaluation. Records obtained through the *Freedom of Information and Protection of Privacy Act* show that one of these proposed external examiners was rejected for conflict of interest, however the records did not reveal the proposed names. See Appendix C. On May 28, 2013 I emailed Dr. Robertson to ask him this information. He replied immediately with the following:



From: Gordon Robertson <dger@uottawa.ca>
Date: 28 May, 2013 16:24:40 EDT
To: Mireille Gervais <case.cresac@sfuo.ca>
Subject: RE: Contact from the Student Appeal Centre

The two names were Drs. Michael Pierrynowski and Graham Caldwell. Dr. Caldwell evaluated both versions of the thesis.

Dr. Pierrynowski was only added after Dr. Benoit recused himself during the second evaluation.

Dr. Caldwell was initially rejected but was approved after it was confirmed there was NO conflict of interest. I have and continue to edit and write a book with him but we have not done any joint research for about 10 years—thus, no conflict.

Good luck with the appeal.

The FGPS regulations regarding conflict of interest state, among other things:

“The proposed external examiner should be at arm’s length from the PhD candidate, from the thesis research and from the thesis supervisor. Examiners must be seen to be able to examine the student and the thesis at arm's-length, free of substantial conflict of interest from any source. The test of whether or not a conflict of interest might exist is whether a reasonable outside person could consider a situation to exist that could give rise to an apprehension of bias.”

It goes on to give examples including: “There is a conflict of interest when: A proposed external examiner is a former research supervisor or graduate student of the supervisor(s) or candidate or has **collaborated** or **published** with the supervisor(s) or candidate within the past six years.” (emphasis added)
<http://www.grad.uottawa.ca/Default.aspx?tabid=1807&msId=21>

In this case, Dr. Robertson himself admits to writing and editing a book with Dr. Caldwell. The reference for the book in question is *Research Methods in Biomechanics*, Gordon Robertson, Graham Caldwell, Joseph Hamill, Gary Kamen, Saunders Whittlesey, Second Edition, 2013. How this can be considered anything other than collaboration between the two researchers is unclear. A reasonable outside person could very easily view this situation as giving rise to an apprehension of bias. Even in the scenario where the two researchers were to edit and write independently, they have a joint economic venture that is pursued to this day.

As such, in the Centre’s view there is a clear conflict of interest between Mr. Ali’s supervisor and the external examiner and as such, that they are not at arm’s



length. This situation should have been remedied prior to the evaluation of the thesis and renders the evaluation process invalid.

3. Procedural concerns with Executive Committee of FGPS' handling of appeal

Dean Ross Hastings, Dean of the Faculty of Graduate and Postdoctoral Studies is the one who rendered the first decision with regard to Mr. Ali's thesis. Dean Hastings decided that Mr. Ali's thesis would not proceed to oral defence and that he subsequently withdrew him from the PhD program. Dean Hastings informed Mr. Ali of his right to appeal his decision to the Executive Committee of the FGPS. See Appendix B.

Upon submitting his appeal of Dean Hasting's decision to Margaret Moriarty, secretary for the Executive Committee, Mr. Ali and the Student Appeal Centre sought to confirm that Dean Hastings would recuse himself from the Executive Committee for Mr. Ali's case, a Committee which he normally chairs. However, debate ensued with regard to our request for recusal. Upon bringing the matter to the attention of the ombudsperson, Lucie Allaire, she sent us the following communication:

From: Lucie Allaire [Lucie.Allaire@uOttawa.ca]
Sent: Tuesday, April 30, 2013 5:11 PM
To: Nicholas Ali
Cc: Mireille Gervais
Subject: RE: Follow up

Hi Nicholas,

I have just spoken to the Vice Dean of the Faculty, Tim Stanley, about the matter and am able to provide you with the following information on your questions about process.

- 1) The Vice Dean has been designated as the Chair of the meeting with respect to hearing your appeal. I think your appeal is being heard next Tuesday?
- 2) The Vice Dean will recommend to the Executive Committee that the Dean not be present for the decision; please note that the Committee will discuss and decide on the process to be followed exceptionally under the circumstances including when the Dean will be in the room and when he will be leaving.
- 3) The minutes of the Committee meeting will clearly indicate when the Vice Dean takes over as the Chair of the meeting and when the Dean leaves the meeting; if you later disagree with how the process was handled by the Faculty, you can challenge their decision on process at the Senate Appeals Committee.



4) If it is important for you to know ahead of the meeting when the Dean will be in the room, you have two options to be informed ahead of your appearance in front of the committee: 1) delay the hearing of your appeal to their June meeting or 2) once the Committee determines process at their next meeting on Tuesday, you could be informed slightly ahead of time, perhaps 30 minutes or so. If you chose to accept to delay your appeal to the June meeting, you would need to send an email indicating that you agree with the delay.

The Faculty is aware of principles at play here and are prepared to inform you ahead of time (point 4) as you wish.

If you have any questions, please contact me.

Kind regards,

Lucie

Lucie Allaire

Ombudsman
UCU307
613-562-5800 poste 6599
www.uottawa.ca/ombudsman

On the day of Mr. Ali's hearing, Vice Dean Stanley informed Mr. Ali and I that the Executive Committee had decided (in the presence of Dean Hastings) to proceed normally, meaning that we would be called into the room to answer questions and make a short presentation, the Dean would be present during this time. Afterwards, we would be asked to leave the room while the Dean would remain in the room to have an "*in camera* discussion about the facts", which again, was reiterated as normal procedure. The Dean would then leave the room at the time the Committee would move to vote. As far as we can tell, that is how the Committee proceeded.

Needless to say, having the decision maker who normally chairs the Committee be present for an "*in camera* discussion about the facts" raises serious concerns. For example, if the discussion centered only around the facts, why was the student asked to leave the room? Why was the student not provided with an opportunity to answer questions regarding any of the facts discussed at that time? Furthermore, why did the Dean refuse to recuse himself? Leaving the room at the time of a vote is in no way sufficient to ensure proper recusal nor does it alleviate concerns with respect to the Dean's authority influencing the Executive Committee's decision making. Furthermore, it should be noted that the Executive Committee was provided with further documentation prepared by the Faculty to enable its decision. Dean Hastings could have easily provided any further facts,



opinions or documentation at that time, in a transparent manner, similarly to the process followed by the Senate Appeals Committee.

These serious concerns put in question the validity of the decision taken by the Executive Committee of the FGPS and create reasonable doubt as to whether Mr. Ali's case was considered in an unbiased manner.

Conclusion

For the Student Appeal Centre, these three issues are central to Mr. Ali's case and cannot be ignored nor dismissed. Each issue is sufficient to invalidate Dean Hasting's January 30, 2013 decision and the Executive Committee's May 10, 2013 decision. As mentioned previously, there are numerous other valid arguments brought forward by Mr. Ali.

All things considered, it is plainly evident that Mr. Ali's thesis evaluation was profoundly flawed and cannot stand. It is also evident that the Executive Committee did not dutifully do its duty in ensuring a fair and equitable appeal process. It is our hope that the Mr. Ali's thesis can be evaluated fairly and on its merits. One can only wonder why professional peer-reviewers of scientific journals have published Mr. Ali's entire doctoral thesis while a thesis evaluation committee where reasonable apprehension of bias and conflict of interest prevail deemed it a failure without possibility of repair.

Sincerely,

Mireille Gervais
Director
Student Appeal Centre
Student Federation of the University of Ottawa